IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5888 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIDHYA SAGAR EDUCATION TRUST

Versus

SECRETARY

Appearance:

MR BD KARIA for Petitioner

MS MANISHA LAVKUMAR AGP for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/06/2000

ORAL JUDGEMENT

#. The petitioner, Vidhyasagar Education Trust, running Hindi Medium Secondary School in Amraiwadi area of Ahmedabad by this petition under Article 226 of the Constitution of India praying for quashing and setting

aside the order dated 30.5.1998 Annexure-H of the Additional Secretary, Education Department, Government of Gujarat, Gandhinagar under which its request for converting the school run by the trust named Vidhyasagar Hindi School from non-grant to grant was turned down.

#. The facts of the case briefly stated are that the petitioner is running primary school, Hindi medium since June, 1988. As per its thought that Amraiwadi is bilingual area and as it was difficult for its students in primary school to get admission in secondary school Hindi medium, it resolved to start secondary school Hindi medium with effect from June, 1990. It is the case of the petitioner that it has to accept the recognition granted by the respondents to start the secondary school Hindi medium on non-grant basis with effect from June, 1993. It came to know that number of schools have been converted by the respondents from un-aided to aided school, it approached to the court by preferring Special Civil Application No.2830 of 1998. This court has directed Education Department to decide the representation made by the petitioner Trust by passing a speaking order on or before 31.5.1998. The petitioner made a detailed representation to the respondent No.1 on 18.4.1998. This was came to be rejected under order dated 13.5.1998 and the prayer made by the petitioner for conversion of school from non-aided to aided was declined hence this Special Civil Application.

#. Shri B.D.Karia, learned counsel for the petitioner contended that the respondent, a welfare State is making hostile discrimination amongst the institutions similarly situated. The learned counsel for the petitioner submits that though recognition of the school without getting grant was accepted, the other schools which were granted recognition on the same condition, later on were given the grant-in-aid but the same treatment has not been given to the petitioner. In his submission the learned counsel for the petitioner states that the petitioner is a minority institution and otherwise also it has to be treated accordingly and the grant-in-aid has to be given to it. Relying on the decision in the case of Chandigarh Administration and Others Vs. Rajni Vali (Mrs.) and Ors. reported in 2000(2) SCC 42, Shri Karia submits that even if at one stage the trust has agreed to get the recognition of the school without any grant-in-aid, it is always open to the trust to apply for the grant to the respondent and the respondent can grant the relief to the trust. Reliance is also placed on the decision of Karnataka High Court in the case of North Coorg Higher Education Society Vs. State of Karnataka reported in AIR

1996 Karnataka 301.

#. The learned counsel for the respondents, Ms.Manisha Lavkumar, AGP vehemently contended that the petitioner has not come up with clean hands before this Court and this petition deserves to be dismissed only on this ground. Further it is contended that the petitioner has given undertaken that it will not claim any grant at the time of praying for the recognition of the school. On this undertaking furnished by the petitioner this recognition has been granted. Ms.Manisha, learned counsel for the respondents submitted that in the area where the school of the petitioner is situated there are more than six other Hindi medium schools within the radious of 10 Kms.

#. It has next been contended that once the petitioner has given up the claim of grant and taken the recognition with this specific condition that it will not claim grant-in-aid it has no right to apply for the same, more so, when six other Hindi medium schools are already available in the area. Carrying this contention further Ms.Manisha, learned counsel for the respondent urges that the decisions on which reliance has been placed by the learned counsel for the petitioner, these are of little help to the petitioner. Each case has to be decided on its own facts. Lastly it is contended that there is no question of hostile discrimination in case of the schools vis-a-vis the petitioner which have been cited by the petitioner. On the basis of local circumstances and requirements those schools were converted from non-grant to grant schools.

#. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am satisfied that this petition is wholly misconceived.

#. A detailed reply to the Special Civil Application has been filed by the respondent No.1. The averments made in the affidavit-in-reply filed on behalf of the respondent No.1 have not been controverted by the petitioner. The petitioner has not filed rejoinder to the affidavit-in-reply. The learned counsel for the petitioner admits that affidavit-in-rejoinder has not been filed by the petitioner.

#. Each case has to be decided on its own facts. The learned counsel for the petitioner fairly admits that before apex court in the case of Chandigarh Administration and Others Vs. Rajni Vali (Mrs.) and Ors. (supra) the point for consideration was altogether

different than what it has arisen in this petition. Before the apex court the pivotal issue was that the teachers, who are employed in unaided school cannot be denied the benefit of the equal pay with those teachers, who are working in the grant-in-aid institution. So, there the dispute was re. claim of parity in the pay scale by the teachers who are identically situated. The litigants in the case before the apex court were the employees in the nongrant aid school. On this factual aspect the claim of the equal pay for equal work was accepted by the apex court of these teachers and the apex court has said that for this claim of the teachers it is hardly matter whether a teacher works in grant-in-aid school or non-grant in school. In the case in hand it is not in dispute that the petitioner has given in writing to the respondent that secondary school Hindi medium be recognised and it will not claim any grant-in-aid. In the reply to the Special Civil Application it has been mentioned that there are six other (similar) schools already operating in the area and it was not obligatory on the part of the trust to start this new school. This has also been noticed in the order impugned in this Special Civil Application. In the village where there is population of more than 1000 and where there is no secondary school in the vicinity of area of 10 Kms. then in that case the school with grant is permitted by the Government and reference has been made in this respect to the Government Resolution of 16.3.1994. In the area where six secondary schools are already there in the vicinity of 10 Kms. of Hindi medium, there was no need to grant the recognition for seventh school by the respondent. The adequate number of secondary schools (Hindi Medium) are there in the area to cater the needs of the students of the area. In case, the petitioner would not have given in writing not to ask for grant-in-aid for ever rightly Ms.Manisha Lavkumar, learned AGP contends that the recognition would not have been granted of the school in favour of the petitioner. This was the only consideration which is clearly borne out from the facts of this case to grant the recognition to the school of the petitioner trust in the area where already six similar schools are there.

#. It is not the case as what is sought to be projected by the petitioner that it was compelled to accept a nongrant school. I find sufficient merits in the contention of Ms.Manisha Lavkumar, learned AGP that the petitioner has not come up with clean hands before this court. It is a case where the petitioner-trust has accepted this recognition with a condition that in future it will not claim any grant-in-aid. It is the voluntary

act of the petitioner and now it cannot resile there from and to file this petition before this court. The trust has to abide by its own voluntary condition, it accepted for recognition of the school. The plea of the discrimination though has been raised but the petitioner could not substantiate it. Otherwise also, it is always open to the respondent looking to the local circumstances it may convert a school from nongrant aid to grant school. Each case depends on its own facts. To prove the discrimination heavy burden lies on the petitioner. The petitioner has to establish to the satisfaction of the court that two schools are identically situated and only thereafter the plea of discrimination may be available to the petitioner. In the case in hand the petitioner has utterly failed to prove that the institutions which have been converted from non-grant to grant are similarly situated that is to say those got recognition of the school with voluntary condition that they will not claim for ever the grant in aid.

##. In this Special Civil Application in para 6 and 10B the reference has been made to the secondary school viz. Laxman Gyanpith Madhmik Shala Godhavi, Tal. Sanand, Dist. Ahmedabad. Firstly this school is situated in rural area. It is not the school situated within the area where the petitioner school is there. Secondly the petitioner has failed to establish that the recognition has been granted to that school on the voluntary condition given by the trust of the school that it will not claim for ever the grant-in-aid. Leaving apart what is stated earlier each case depends on its own facts and in case in local circumstances that is to say to make available the education facilities to the students appropriate order can be passed for conversion of the school from non-grant to grant. The respondents have given out that in local circumstances that school has been given the benefits of the grant, so on both the counts this plea of discrimination raised by the petitioner in this petition is not tenable. Then the reference has been made by the petitioner in para No.10(c) to the order of the Board of conversion of as many as 5 schools from non-grant to grant getting school. It is suffice to say that the petitioner has not given out the details of all those five schools. From Annexure-E I find that two of the schools are in Ahmedabad. Other three schools are at other places. For these five school to which the reference has been made by the petitioner, it is not the case of the petitioner that those schools were also granted the recognition on the voluntary condition that they will not claim the grant-in-aid. At the cost of repetition it is to be

stated that each case has to be decided on its own facts and in the case of five schools also the petitioner has failed to substantiate its plea of discrimination. The petitioner has not produced necessary material to satisfy the court that those schools identically situated. The case of the Karnataka High Court is also of little help to the petitioner in this case.

In the result, this Special Civil Application fails and the same is dismissed with costs. Rule is discharged. Interim relief, if any, granted earlier stands vacated. The petitioner is directed to pay Rs.500/= towards costs of the petition to the respondent-Board.

(S.K.Keshote, J.)
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